

Denver Journal of International Law & Policy

Volume 16
Number 2 *Winter/Spring*

Article 10

May 2020

The Law of War

Linda A. Malone

Follow this and additional works at: <https://digitalcommons.du.edu/djilp>

Recommended Citation

Linda A. Malone, The Law of War, 16 Denv. J. Int'l L. & Pol'y 429 (1988)(book review).

This Book Review is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Denver Journal of International Law & Policy by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

BOOK REVIEW

The Law of War

*Reviewed by Linda A. Malone**

De Lupis, Ingrid Detter, *THE LAW OF WAR*, Cambridge University Press, New York, New York (1987); \$64.50 (cloth), \$24.95 (paper), ISBN 0-521-34337-2, 411 pp.; bibliography, index, preface by the author.

As the Iran-Iraq War continues into its eighth year of noncompliance with international law, it is reassuring to read a book asserting the necessity for laws regulating war. A preface claims that *THE LAW OF WAR* is the first substantive treatment of the area in the English language since 1952. As such, the book is useful in relating recent incidents in warfare to the laws of warfare and as a general reference book in international law.

The author is very careful from the beginning to define her terms, including "war," "terrorism," and "armed conflict," although her definitions are not always satisfactory. For example, De Lupis poses the following definition of "terrorism":

"International terrorism implies either isolated assassination and 'hostility' missions or the intermittent use or threat of force against person(s) to obtain certain political objective of international relevance from a third party."

This definition, however, does not address perhaps the most important element to identification or "terrorism": the identity of the party against whom the violence is directly addressed. Although the author does include in the text an excellent analysis of this aspect of terrorism, the definition itself in referring to demands on third parties does not make this distinction between targets clear. Perhaps the author cannot be faulted for failing to define a term that is indefinable so long as one person's freedom fighter is another person's terrorist. In any event, a more valuable aspect of the book is its careful distinction between prohibition of war, restrictions on weapons, prohibitions on methods of warfare, and the humanitarian rules of war.

* Visiting Associate Professor of Law, University of Denver College of Law; B.A. 1975, Vassar College; J.D. 1978, Dulee University; LL.M., 1984, University of Illinois.

On the one hand, the author quite convincingly criticizes the outdated notion of war as separate and distinct from belligerencies or insurgencies, and attempts to distinguish between "guerilla warfare" and "terrorism." At other times, however, the author fails to note modern innovations in international law, particularly in relation to prohibitions on the use of force such as reprisals. For example, in the discussion of consent as justifying intervention, the author accepts that voluntary consent by a state can legitimize intervention that would otherwise be unlawful, although pointing out the difficulties of evaluating the legitimacy of the consent given. Also somewhat frustrating is that the author sometimes ends a section without coming to any ultimate conclusions, as with the chapter on the concept of war. This occasional reticence to draw conclusions is puzzling, particularly insofar as the author at other opportunities in the text does not hesitate to reach difficult conclusions, as in her determination that the use of nuclear weapons, and perhaps even their possession, violate international law.

The incorporation of recent events into the narrative, however, is excellent. Frequently, current developments in the Iran-Iraq War, Nicaragua, the "Star Wars" program, and the Middle East are discussed in connection with well established rules of war. In this regard, much of the book's discussion, in particular its evaluation of the PLO as a belligerent and the invasions of Grenada and Kampuchea as humanitarian intervention, is thoughtful and provocative. One striking example of the author's use of recent events is the disturbing parallel she draws between Iran's refusal to appear before the International Court of Justice in the Iranian hostages case and the United States' refusal to defend itself in *United States v. Nicaragua*.

The most compelling section of the book is the chapter on restrictions of weapons. None of the minor failings in the rest of the book are apparent in the author's discussion of prohibited weapons. The chapter includes a history of weapons that cause indiscriminate suffering, technical descriptions of weapons of mass destruction, and evaluation of the current state of international law regarding chemical, biological, and environmental weapons. The analysis manages to be comprehensive yet maintain a depth of detail that is useful even to someone already familiar with the area.

In her conclusion, De Lupis points out two emerging trends in the law of warfare: application of international law to intra-state conflicts and recognition of the rights of groups and individuals during war. Cynics frequently criticize international law for failing to accommodate the "realities" of war, yet THE LAW OF WAR demonstrates the opposite conclusion, that international law flexibly adjusts to developments in warfare while preserving humanitarian concerns and interests of national security. For example, article 2 (4) of Protocol III to the 1981 *Weaponry Convention* prohibits attacks on forests or "other kinds of plant cover" except if such "natural elements" are used to cover, conceal, or camouflage combatants or their military objectives. De Lupis quite correctly asserts that this so-

called "jungle exception" undermines the application of Protocol III in any countries covered by jungle vegetation. The end result is that a state covered by jungle vegetation has no protection under the Protocol from weapons such as napalm. In instances such as this, the rules of war transform theaters of war into theatres of the absurd. Yet we have only to see the alternative, a war waged in the Persian Gulf with little or no respect for human life and the environment, to agree with the author's call for renewed adherence to international laws regulating warfare.

